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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

FIRST COMMITTEE

SUMMARY RECORD OF THE 4th MEETING

Held at the Austria Center Vienna,
on Thursday, 4 April 1991, at 2.30 p.m.

Chairman: Mr. BERAUDO (France)

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The meeting was called to order at 2.55 p.m.

CONSIDERATION OF ARTICLES 1 TO 16 AND 20 OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (agenda item 3) (continued) (A/CONF.152/5, 6, 7 and Add.1 and Add.1/Corr.1 and Add.2)

Article 3 (A/CONF.152/C.1/L.9, L.33, L.34, L.36)

1. The CHAIRMAN explained that the proposal by Germany in document A/CONF.152/C.1/L.9 was obsolete, since it was consequential upon the German proposal for the first sentence of article 1 (a), which had been withdrawn (A/CONF.152/C.1/SR.1, para. 12).

2. Mr. ROMAN (Belgium), introducing the proposal in document A/CONF.152/C.1/L.33, said that its object was to place a time-limit on the responsibility of the operator for the goods in the event that the person entitled to take delivery of them failed to do so.

3. Mr. MORAN (Spain) supported the idea of such a time-limit but pointed out that the provision in draft article 10 for a right of retention carried that implication since no operator would detain goods in the terminal for such a long period that the cost to him became prohibitive. It therefore seemed unnecessary to prescribe a time-limit in article 3.

4. Ms. SISULA-TULOKAS (Finland) welcomed the addition proposed by Belgium, which would clarify the point at which the operator's responsibility ceased.

5. Mr. LARSEN (United States of America) agreed with the representative of Spain that article 10 had a bearing on the matter. His delegation had submitted a proposal for a new paragraph to article 10 (A/CONF.152/C.1/L.15) which would have the same effect as the Belgian proposal, by establishing a time-limit after which the goods could be considered to be abandoned and be taken into the operator's possession. He suggested that the issue be held in abeyance until the Committee was ready to deal with draft article 10.

6. The CHAIRMAN observed that the duration of the operator's responsibility for the goods and his right of retention were separate legal issues. However, there was a degree of overlap between them.

7. Mr. HERBER (Germany) had grave doubts about the Belgian proposal. It was not clear when the specified period of 30 days would begin, and the "period stipulated in the contract" might be as short as two days, which would be unacceptable. Moreover, questions related to the nature, conclusion and violation of the contract were all governed by domestic law, which would also govern the liability of the operator if the person entitled to take delivery of the goods failed to do so.

8. Mr. SULEIMAN (Nigeria) supported the Belgian proposal. It merely sought to limit the responsibility of the operator to the period in which the cargo was in his hands. The effects of the Convention would be confined to that period.

9. Mr. SAFARIAN NEMATABAD (Islamic Republic of Iran) said that in its existing form draft article 3 already provided a logical framework for the operator's responsibility by limiting it to the time during which he had charge of the goods.

10. Mr. LAVIÑA (Philippines) thought the issue of limitation of responsibility was sufficiently covered in draft article 10. Moreover, there was provision in draft article 5 (3) and (4) for the liability of the operator in certain circumstances. Delay in handing over the goods was covered by paragraph 4 of that article. He therefore favoured article 3 in its existing form.

11. Mr. WALL (United Kingdom) said that as matters stood, there was some difficulty in specifying exactly when the operator's period of responsibility began and ended. The phrase "at the disposal of" was ambiguous. As he saw it, the operator was responsible for the goods from the time the carrier or another person delivered them into his sole charge until such time as he handed them to another person entitled to take delivery of them. If nobody took delivery, the conditions specified in draft article 10 would take effect. Draft article 3 could perhaps be formulated more clearly.

12. Mr. ROMAN (Belgium) pointed out that the delay referred to in article 5 (3) was delay caused by the operator himself, whereas the delay referred to in his delegation's proposal was caused by the person who failed to take delivery, a situation for which the operator could not be responsible.

13. Mr. RUSTAND (Sweden) observed that in some countries the phrase "placed at the disposal of" had a specific legal meaning, requiring the customer to be notified that the goods awaited collection. If it was felt that those words were not sufficiently clear to determine the time at which the operator's responsibility ceased, an amendment introducing a requirement for the operator to give written notice of discharge would produce the desired effect. He could not agree with the representative of Germany that the operator's responsibility should continue as long as he had charge of the goods.

14. Mr. TARKO (Austria) said that article 3 and article 10 dealt with different issues: article 3 defined the period for which the operator was responsible for the goods in his charge, whereas article 10 dealt with the circumstances in which he had a right to retain them to defray his costs. The two issues should not be confused.

15. Mr. ZHAO Chengbi (China) thought the period of the operator's responsibility was clearly defined in the existing draft article 3. It extended from the time when the operator took charge of the goods until the moment when he handed them to the person entitled to receive them. Failure by the customer to take delivery of the goods was a separate issue, to which draft article 10 was applicable. The Belgian proposal merited close attention in that context.

16. Mr. LARSEN (United States of America) favoured the text of article 3 as it stood. The question of the operator's responsibility could be reconsidered in the context of article 10.

17. Mr. HORNBY (Canada) opposed the Belgian proposal. It did not dispel the potential ambiguity in draft article 3 concerning the period of the operator's responsibility, nor make it clear when the 30-day period would begin to run. He would prefer a simpler form of words.

18. Mr. ABASCAL (Mexico) said that his delegation preferred the text as it stood. Article 3 dealt only with the period of responsibility of the operator. It was a generally accepted rule of law that that responsibility ceased when the goods taken in charge were handed over to the person entitled to take delivery of them or were placed at that person's disposal. Rights of retention or sale were dealt with in article 10.

19. Mr. ROMAN (Belgium) said that it was important to realize that the proposed period of 30 days could enter into effect from the moment the operator took the goods in question in charge. In some cases it might be difficult or impossible for the operator to give notice to the person entitled to take delivery, who might be unknown; that problem could be met by limiting the period of responsibility to 30 days or to the period stipulated in the contract.

20. The CHAIRMAN invited the Committee to vote on the Belgian proposal (A/CONF.152/C.1/L.33).

21. The proposal was rejected by 26 votes to 3.

22. Ms. SISULA-TUKOLAS (Finland), introducing her delegation's proposal (A/CONF.152/C.1/L.36), said that its purpose was to clarify the notion of placing the goods at the disposal of the person entitled to take delivery of them. Where the customer or the operator of the transport terminal was in delay, it should not be enough for the operator simply to declare that the goods were at the customer's disposal. Some sort of notification should be necessary to determine the time at which the operator's responsibility ceased. Her own preference was for the first alternative proposed by her delegation.

23. Mr. RUSTAND (Sweden) said that he supported the Finnish proposal in principle, although it was to some extent superfluous. In Swedish law, the notion of placing at disposal included giving notice to the customer and inviting him to collect the goods. However, if adding a requirement to give notice would answer the concerns of any other delegation, his delegation would support it.

24. Mr. SWEENEY (United States of America) said that he could not support the proposal. It would add to the Convention a mandatory requirement for the operators of transport terminals which was not part of their normal business. It was, in fact, part of the carrier's responsibility to notify the consignee that the goods had arrived and were ready to be picked up. In maritime transport such notification was essential and documents for sea and land transport contained an entry giving the name of the "notify party". An airway bill required a similar entry. There was no need to confer the further obligation on the operator to give notice that might not be necessary.

25. Mr. LAVIÑA (Philippines) preferred the second alternative proposed by Finland although it specified no time-limit after the receipt of notice. He felt there was no need to amend article 3.

26. Mr. WALL (United Kingdom) said that his delegation believed the more precise the Convention was, the more likely would be its acceptability to a large number of people. His delegation therefore found considerable merit in the Finnish proposal, although it might be better to redraft the article altogether. If the Finnish proposal was accepted, it must be made clear that the person entitled to take delivery of the goods had received prior notice that they had been placed at his disposal. Whatever additional burden that might involve for the operator, it would have the benefit of giving a starting point from which to calculate what other measures might need to be taken, if, for example, the goods were abandoned. His delegation intended to submit a redrafted version of article 3, but it would in the meantime support the second Finnish alternative if the word "prior" was added to it before the word "notice".

27. Mr. RUSTAND (Sweden) said that his delegation opposed the second alternative because it would mean that the operator would need to await some proof of the receipt of notice. It did not, however, believe that giving notice, as the first alternative provided, would place a new duty on the shoulders of the operator; rather it would be in his interest, enabling him to avoid continued responsibility for goods which had not been collected. The first alternative was a valuable clarification of article 3.

28. Mr. ABASCAL (Mexico) said that the Finnish addition should not be regarded as imposing a further duty on the operator but as a means of ending the period of responsibility. His delegation was not prepared to go so far as to require the article to stipulate proof of receipt of the notice. It therefore favoured the first alternative.

29. Mr. BONELL (Italy) said that article 3 had been intended to meet the situation in which the person entitled to take delivery of the goods did not appear to collect them; in such a case, it was not the operator that was in default. Why, therefore, should he be obliged to give notice? Where the consignee had lost all interest in the goods, it might be very difficult to give notice. The requirement to give notice would not only place an unjustified additional burden on the operator but might prove impossible to fulfil. His delegation could not support the Finnish proposal.

30. Mr. ZHAO Chengbi (China) reiterated his delegation's view that article 3 should deal solely with the period of responsibility, a matter which was adequately covered by the Commission's draft. The article had no place for such specific issues as a period of notice or responsibility for notice. The Hamburg Rules contained no such requirement, only a provision establishing the conditions under which the goods were taken over and subsequently delivered. The non-appearance of the person entitled to take delivery of the goods would be covered by local laws and, for the purposes of the draft Convention, by article 10.

31. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that the Committee should carefully consider what was meant by the phrase "has placed them [the goods] at the disposal of the person entitled to take delivery of them" and how that operation was to be carried out in physical terms. Article 3 as it stood did not clarify or define that point, although the procedure had to be conducted in accordance with specific rules. Article 4 (2) of the Hamburg Rules referred to the placing of the goods at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge. The problem had been discussed by the Working Group on International Contract Practices, which had decided that article 4 (2) of the Hamburg Rules would have to be recognized as applying to the matters regulated by the draft Convention. However, since the draft Convention covered not only carriage by sea but also other forms of carriage, the Working Group had decided not to include in the draft the wording which appeared in the Hamburg Rules but to leave it to be assumed that those rules applied none the less. That would be the normal way of resolving the question of what the phrase "place [the goods] at the disposal of" meant. Under the Finnish proposal, the procedure of placing goods at a person's disposal would require only one action, that of giving notice, which in turn meant that if notice had been given, no other action was required of the operator. He agreed with the United States that an additional burden would be placed on the operator if the Finnish proposal was accepted, because in practice in in some cases it was sufficient for oral notice to be given instead of written notice, as defined in article 1. On the other hand, in some countries local usage might require additional measures to be taken, so that any attempt to solve the

(Mr. Lebedev, Union of Soviet Socialist Republics)

question by means of an international convention might not be very effective. For all of those reasons, the formulation of article 3 which appeared in the Commission's draft might be the best way of solving the problem.

32. Mr. ROMAN (Belgium) said that the statement made by the representative of Italy clearly reflected his delegation's concern with draft article 3 and the reasons why it had proposed an amendment to it.

33. Mr. WALL (United Kingdom) said that it was important to ensure that the draft Convention did not lean too heavily on the rules contained in any single convention dealing with any particular transport mode. The United Kingdom would have difficulties with it being overdependent on the Hamburg Rules as other States might have with it being overdependent on other conventions. The draft Convention had to fit neatly into the gaps between the other transport conventions but as far as possible had to be self-contained. In the light of the discussion, and particularly the statement by Italy, the United Kingdom delegation now felt that no more should be required of the operator than to make reasonable efforts to give notice.

34. Ms. JORGENSEN (Denmark) said that the goods might be sold many times while in possession of the operator. That being so, the operator might not readily know the identity of the person entitled to take delivery of them, in which case there could be no rule requiring him to give the notice to which the Finnish proposal referred.

35. After an exchange of views on how the Finnish proposal might be reworded to cater for the views expressed by delegations, and with the approval of Ms. SISULA-TUKOLAS (Finland), Mr. WALL (United Kingdom) proposed the following text as a revised form of the first Finnish alternative: "and he has sought to give reasonable prior notice thereof to that person".

36. Mr. LAVIÑA (Philippines) said that his delegation disliked the United Kingdom wording because it was uncertain as to whether the wording required the operator to succeed in giving the notice and the person concerned to receive it. The wording placed overdue emphasis on the operator's efforts and failed to specify a period of time during which the consignee could obtain the goods. His delegation therefore continued to prefer article 3 as it stood. It endorsed the views put forward by the representatives of the United States and the Soviet Union.

37. Mr. SULEIMAN (Nigeria) suggested specifying that the notice might be served by the operator either directly or indirectly, thus ensuring that an undue burden was not placed on the operator and that the requirements of local laws in many parts of the world were taken into account.

38. Mr. TARKO (Austria) said that he was satisfied with the formulation of article 3 as it stood and also had some sympathy for the first Finnish alternative in its original form. As revised by the United Kingdom, it caused his delegation problems. Austria would prefer it to read: "and he has given or sought to give prior notice thereof to that person".

39. Mr. ROJANAPHRUK (Thailand) submitted that the first Finnish alternative, as revised by the United Kingdom introduced unwelcome elements of subjectivity and imprecision into the Commission's draft; it would also have the undesirable effect

(Mr. Rojanaphruk, Thailand)

of placing an additional burden and responsibility on the operator. For his part, he found the Commission's text adequate; if a question of notice were to be involved, it should be the responsibility of the person entitled to take delivery to notify the consignee as soon as the goods were placed at his disposal.

40. Mr. AIT HMID (Morocco) fully endorsed the remarks made by the representative of the Philippines.

41. Mr. RUSTAND (Sweden) said that surely what was at issue was whether or not the operator, when placing the goods at the disposal of the customer, should accept the additional burden - which he himself considered a minor one - of making reasonable efforts to give notice thereof.

42. Mr. WALL (United Kingdom), responding to the comments made by the representatives of Austria and Sweden, suggested the following further revision of the first Finnish alternative: "and has given or made reasonable attempts to give prior notice thereof to that person".

43. The CHAIRMAN put to the vote the second wording suggested by the United Kingdom for the addition to article 3 proposed by Finland.

44. The wording was rejected by 22 votes to 8, with 3 abstentions.

45. Mr. ABASCAL (Mexico) introduced the proposal in document A/CONF.152/C.1/L.34, which was intended to ensure that the Convention specified clearly the time when the operator's responsibility began. It was motivated by a situation common in respect of certain goods in some Mexican ports, and possibly met with in other countries as well: when goods had been unloaded from a ship - and the carrier's responsibility had therefore ended - the warehouse operator failed to take them in charge immediately, and subsequently denied all responsibility for them during what had come to be known as el periodo de nadie, a time when they were nobody's concern. That was obviously a most undesirable state of affairs, which his delegation's proposal sought to remedy.

46. Mr. WALL (United Kingdom) commended the words "when the goods are delivered to him" in the Mexican proposal for its precision in situating the beginning of the operator's responsibility. That being said, he did not believe that the Mexican amendment would be of any great benefit to the article, on which his delegation reserved its final position.

47. Mr. TARKO (Austria) agreed that the amendment would contribute little to the article. Not only was the first part of the text somewhat difficult to understand; it also seemed quite clear from the definition in article 1 (a) that a person who failed to take goods in charge could not be considered an operator for the purposes of the draft Convention.

48. Mr. ABASCAL (Mexico) withdrew his delegation's proposal.

ELECTION OF A VICE-CHAIRMAN AND A RAPPORTEUR (agenda item 2)

49. Mr. LAVIÑA (Philippines) said that the members of the group of Asian States, were ready to assume any responsibilities that might be assigned to them in the conduct of the Committee's proceedings. They found the continued absence of a

(Mr. Laviña, Philippines)

rapporteur in the First Committee disquieting. Moreover, they regretted that the Conference had not yet appointed a Credentials Committee and elected all its officers.

50. Mr. ABASCAL (Mexico), speaking as President of the Conference, called for the speediest possible nominations for the Credentials Committee and the outstanding posts on the General Committee.

The meeting rose at 5.35 p.m.